

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 808 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?

No

SNEHLATA CHANDRAKANT CHALISHAZAR

Versus

MS THANVI OR HIS SUCCESSOR

Appearance:

MR DA MEHTA, MR RK PATEL, MR MK PATEL & MR BD KARIA
for Petitioner
MR P.G. DESAI for MR MR BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 08/04/99

ORAL JUDGEMENT (per R. Balia, J.)

Rule. Service of rule is waived by learned counsel for the respondent. Heard the learned counsel for the parties.

2. A short question is raised in this petition. The dispute relates to denial of benefit of Sec. 80U of the Income-tax Act, 1961, as the handicapped assessee, for the A.Y. 1991-92 to 1995-96, by the C.I.T., Gujarat II, Ahmedabad, vide his order dated 15.12.98.

3. The facts necessary to be noticed are that for all these assessment years in question, the assessee did not claim benefit of handicapped assessee before the ITO and the assessments were allowed to be completed on that basis. Thereafter, on expiry of the period of limitation, applications were made in respect of each of assessment year before the CIT u/s 264 of the Income-tax Act with application for condonation of delay to claim benefit of Sec. 80U in respect of assessment for the aforesaid assessment years. A certificate of Dr. Prabodh Desai dated 11.1.1997 was produced before the Commissioner stating that the assessee "is in his treatment for arthritis affecting both her knee joints for the last 15 years. She was operated in Dec. 1985 on her left knee. In spite of this the condition of her knees has continued to worsen and from the year 1991 she has been disabled considerably. She also has flat feet and dilated telangiectases resulting in oedema of both her lower limb." The certificate further states, "I estimate that from the above mentioned year 1991 her permanent physical disability has been 65% in both her lower limbs." The said certificate shows Dr. Prabodh Desai as Consultant Orthopaedic Surgeon. The address was given as Rooms & Nursing Home: Near Nagri Hospital, Anandbaug, Ellisbridge, Ahmedabad.

4. The Commissioner noticed that Dr. Prabodh Desai, Consultant Surgeon, on 11.1.1997, has stated that the assessee was suffering from physical disability in both her lower limbs to the extent of 65% since 1991. It is not understood how the extent of disability can be judged as 65% existing in 1991, in the year 1997, thus doubting the efficacy of the certificate for the periods in question. He further stated that the certificate u/s 80U should be from a doctor working in a government hospital. The letter-head of Dr. Prabodh Desai does not indicate that he is working in a government hospital. He referred to the salary certificate from Gujarat Cancer Research Institute showing a payment of Rs. 6000/- to Dr. Prabodh Desai for honorarium for working as a doctor in the government hospital. The CIT further observed that Dr. is attached as an honorary surgeon and has been paid honorarium for the whole year. Had he been working in government hospital, he would have been having some designation of the post held by him. A honorary doctor

cannot be said to be working with a government hospital.

5. Thus, considering the two reasons along with the fact that the assessee has not laid any claim before the A.O., CIT did not find the order of the A.O. to be erroneous which warranted the revision of the order. The petitioner challenges the said order. It may be noticed that for the subsequent years 1996-97 and 1997-98, the petitioner has been given benefit of sec. 80U on the very same certificate.

6. Two-fold contentions have been raised before us. Firstly, that the CIT could not have sit over the certificate issued by the concerned doctor who is an expert in his field, if the certificate was otherwise the one on the basis of which the benefit could be claimed u/s 80U. Secondly, it has been urged that rejection of the certificate as not of a doctor working in the government hospital is, on the face of it, incorrect inasmuch as, on his own finding, the doctor was attached as honorary surgeon with the Gujarat Cancer Research Institute. It is not the case that the Institute was not a government hospital within the meaning of the term as defined in Explanation to sec. 80DD which is applicable to the provisions of sec. 80U also as per Explanation attached to it.

7. The law requires only that the certificate should be from a physician, surgeon or an oculist or a psychiatrist, as the case may be, working in a government hospital. The statute does not inhibit a further limitation in what capacity such physician, surgeon, oculist or psychiatrist should be working in that government hospital. Reading an inhibition that he should only be working as a doctor regularly employed by the government was not warranted.

8. Learned Counsel for the respondent urged that the certificate being of 1996 it has been given effect for the future year but as it could not relate to the earlier years the CIT has rightly not thought it fit to act on the certificate, in exercise of his revisional jurisdiction, particularly when no such claim was made before the ITO. The order of ITO as such could not have been held to be erroneous which would warrant exercise of revisional jurisdiction u/s 264.

9. Having given our careful consideration, we are not impressed by the contentions raised in defence. Having found a good cause and condoned delay, the fact that claim has been made at a late stage, by itself,

would not be a ground for rejecting the same.

10. Since the insertion of provision the statute has provided the conditions on the fulfillment of which an assessee is entitled to benefit of deduction u/s 80U. It also provided the mode of proof to establish physical disability of the assessee. Initially the requirement was only that physical disability must be certified by a registered medical practitioner, only for the first year of assessment. By Finance (No.2) Act of 1991 Sec. 80U was substituted w.e.f. 1.4.92 which required that physical disability is to be certified by a physician, surgeon, oculist or a psychiatrist as the case may be working in a Government Hospital, and which has the effect of considerably reducing the capacity for normal work or engaging in a gainful employment or occupation. The assessing officer has not been made further arbiter of correctness of certificate, once the condition is fulfilled. Under sec. 80U, as it stood prior to its present form before 1.4.92, that is to say, before the commencement of A.Y. 1992-93, the requirement of laying a claim to benefit u/s 80U was that such individual produces before the A.O., in respect of the first assessment year for which deduction is claimed under this section in the case covered by clause (ii) of sub-sec. (1), namely, where the assessee's claim is founded on suffering from a permanent physical disability (other than blindness) a certificate as to permanent physical disability from a registered medical practitioner. The requirement of such registered medical practitioner working at the government hospital or any other set up was not envisaged. The requirement under the amended provision w.e.f. 1.4.92 is that the certificate should be by a physician, a surgeon, an oculist or a psychiatrist working in a government hospital. The term used in the present provision is not that the doctor certifying permanent physical disability should be employed as a civil surgeon in a government hospital on a regular salary or on regular basis. The requirement is only of working in a government hospital which is of much wider import than employed in a government hospital on regular basis. A surgeon rendering honorary service at a government hospital is as much a surgeon working on regular basis in a government hospital under regular rules of employment.

11. In the present case it is apparent that during the course of assessment for A.Y. 1996-97 claim to benefit u/s 80U had been laid for the first time w.e.f. A.Y. 1991-92. So far as A.Ys. 1996-97 and 1997-98 are concerned, the revenue has found that conditions for

grant of benefit u/s 80U are satisfied on the anvil of the very same certificate of Dr. Prabodh Desai. Thus, for the purpose of A.Y. 1996-97, his capacity as a surgeon working in government hospital has been accepted and also the genuineness of certificate emanating from him.

12. We, therefore, find that the CIT apparently erred in rejecting the certificate as not of the surgeon working in a government hospital merely because Dr. Desai was working as an honorary surgeon and not as a paid employee. As noticed above, it is not a case that the Gujarat Cancer Research Institute does not fall within the definition of a government hospital within the meaning of explanation to sec. 80DD r/w explanation attached to sec. 80U.

13. Having prescribed the mode of laying claim for benefit u/s 80U, that is to say, by producing a certificate of a registered medical practitioner until A.Y. 1991-92 and thereafter requiring production of certificate by a physician, a surgeon, an oculist or a psychiatrist, the provision has not empowered the A.O. with authority to adjudicate upon the correctness of this certificate. Obviously, the ITO being not supposed to be an expert in the field of medicinal sciences, the matter has been left to be certified by the experts in the field and after the amendment the field of choosing such experts have also been limited to those who are working in government hospitals. Even otherwise, ordinarily, the course do not trench upon field of expert opinion which depends on specialised study and special knowledge of the subject. This is not to say that the A.O. or the courts do not inquire into the genuineness of the certificate. If the certificate is found to be spurious it can certainly be rejected, but if the certificate is found to be genuine and coming from the source required under the statute, the correctness of which cannot be made subject-matter of further scrutiny by the A.O. or the courts, with reference to general probabilities. We find in this case that the genuineness of certificate is not in doubt inasmuch as on the very same certificate, undoubtedly, the AO has allowed deduction under the provisions of sec. 80U for subsequent years. Thus, genuineness, correctness and proper source of certificate under the Act has been accepted. It cannot be said that the doctor who satisfied the test of working in government hospital on the date of issue of certificate cannot be considered to be so for one period and not for another period. Law has not prescribed the certificate of permanent physical disability be obtained within

particular time of the period for which deduction u/s 80U is claimed. It can be produced at any stage of the proceedings. Assuming for the sake of argument that it be so for the earlier years, we notice that for the first year of claim 1991-92 requirement u/s 80U as it stood then was not that certificate be of a surgeon working at government hospital but certificate from any registered medical practitioner was needed to be produced and it enured for all subsequent years. If that be so, the certificate of Dr. Prabodh Desai for A.Y. 1991-92 fulfills that condition and it being otherwise genuine certificate, the AO could not have rejected it on the ground that it does not come from prescribed source and genuineness of certificate being not in doubt, it could not have sit over the judgment of its correctness. Thus, viewed from any point of view, the order of the Commissioner suffers from the error apparent on the face of record and cannot be sustained.

14. This petition is accordingly allowed. The impugned order is quashed and the Commissioner is directed to decide the question on the grant of benefit u/s 80U afresh in accordance with law.

Rule is made absolute with no order as to costs.

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